UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1075
10 October 1991

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Forty-second session

SUMMARY RECORD OF THE 1075th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 16 July 1991, at 10 a.m.

Chairman: Mr. POCAR

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GE.91-16677/3792B

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Madagascar (CCPR/C/28/Add.13; M/CCPR/91/24) (continued)

1. The CHAIRMAN invited the delegation of Madagascar to reply to the questions contained in section XI of the list of issues to be taken up in connection with the consideration of the second periodic report of Madagascar (M/CCPR/91/24).

XI. Freedom of assembly and association and the right to participate in the conduct of public affairs (arts. 21, 22 and 25)

(a) Please provide information on progress made in efforts aimed at greater trade union freedom (see para. 215 of the report).

(b) Please comment on current efforts to liberalize political life by introducing a multi-party system and provide information on the existing political parties. How are political parties formed and registered?

(c) What legal requirements relate to the right to vote or to be elected? (see art. 40 of the Constitution.)

(d) How has the decentralization of communities promoted the rights under article 25 of the Covenant?

2. Mr. RADAODY RAKOTONDRAVAO (Madagascar) said that during the period covered by the report (CCPR/C/28/Add.13), considerable progress had been made in Madagascar with regard to freedom of assembly and association and the right to participate in the conduct of public affairs. One of the purposes of the promulgation of the 1975 Constitution had been to mobilize the population and encourage it to take a more active part in the conduct of the country's affairs; that had involved the establishment of decentralized communities and "revolutionary" groups bringing together political and trade union organizations. The aim at that time had been to rationalize the activities of the seven or eight main political groups which had adopted the Charter of the Malagasy Socialist Revolution.

3. Over the years, however, it had become clear that such rationalization was not so easy to achieve in practice. On the eve of the 1989 presidential election, the "National Front" uniting all the political parties had broken up and each party had in effect regained its independence, as had already happened at the time of the 1982 presidential election. Recognizing the de facto situation, the Government had proposed in 1989 to revert to a simpler system of political organization and accordingly the law relating to trade union and political bodies had been completely changed. The new draft article 23 of the Constitution submitted by the Government read: "The State shall ensure the protection of the rights of workers by law and the right to strike shall be expressly recognized. It shall be exercised in conformity with the law." Similarly, the new article 8 stated: "Citizens shall have

full enjoyment of their civil rights and may form political parties or organizations freely in accordance with democratic rules".

4. There were now 33 political parties in Madagascar of varying size. Seven of them had always been the dominant parties and the largest one held two thirds of the seats in the People's National Assembly, since it represented a coalition of several parties, committees and alliances which had joined forces to constitute a majority group. The six other main parties nevertheless had freedom of action and three of them were fairly well established nationwide. Although the 26 other parties were relatively small, there was likewise nothing to prevent them legally from pursuing their chosen course of action.

5. The law relating to trade unions had also had to be changed. The ordinance governing political and trade union activities had in effect made it compulsory for trade unions to be affiliated to a member party of the National Front for the Defence of the Revolution. However, the main Malagasy trade union, the Madagascar General Workers Confederation, had for internal reasons always refused to become affiliated to any party and had preserved its independence while supporting the action of the Government. That had caused serious difficulties for the conduct of public affairs and the legislation had therefore been changed to enable that trade union to participate fully in national life. Then, in 1989 the ordinance governing political and trade union activities had been repealed and the right to organize had been restored to the great satisfaction of all, since trade unions had existed in Madagascar well before the political parties and had a very long-standing national role. In fact, the first trade unions had been established in Madagascar in 1927 and 1928, under the colonial occupation, by French communist and socialist militants who had maintained close relations with workers' organizations in France and had subsequently been among the founder members of international movements such as the World Federation of Trade Unions. Thus trade unions had always had a strong presence in factories, ports, railways, the public service, etc., and consequently there could be no question of dissociating them from political activities.

6. Regarding section XI (b) of the list, he felt that he had already answered the first part of the question. As to the second part, the procedures instituted in 1975 had been considered very restrictive by the political parties because, although free to set themselves up as parties, they had nevertheless been required to register their statutes, obtain the Government's approval with the National Front, which at that time had brought together the parties supporting the Government. Those procedures had gradually been abandoned and replaced by simpler arrangements whereby political parties had only to deposit their statutes with the Ministry of the Interior and were not required to obtain the approval or authorization of the Government.

7. With regard to question (c), the legal requirements were still those of article 40 of the 1975 Constitution, but they were now being changed. Under the new draft article 40, all Malagasy citizens without distinction had the right to vote from the age of 18 and any citizen who had reached the age of 21 and was listed on the electoral rolls could be elected. Furthermore, the 1982 ordinance stipulating that the conditions applicable to the right to vote

of women who acquired Malagasy nationality by marriage were established by the Nationality Code, and the ordinance relating to the right to vote of aliens who were naturalized Malagasies, had been or would be amended since under the new article of the Constitution, all Malagasy citizens had the right to vote.

8. Regarding question (d), one of the interesting features of the country's political life had been the appearance of decentralized communities which had created a virtually permanent electoral process at all levels and had been an excellent school for civic and political education. Citizens had thereby learnt how to use the electoral machinery and had never hesitated to challenge the results of elections, as was evidenced by the many rulings of the Constitutional High Court concerning election disputes. The Government of Madagascar hoped that process would continue since it faithfully reflected the principles of decentralization and self-determination of the people. A debate was currently under way to decide whether the powers to be granted to the decentralized communities should be as wide-ranging as provided for in the 1975 Constitution or more limited. In any event, the communities would be reluctant to give up rights they now regarded as acquired. The people had been given a taste for direct democracy and greatly valued their right to express their views by vote or referendum on everything affecting their daily lives.

9. Mr. MYULLERSON said he appreciated that the political and social situation in Madagascar was constantly evolving, but that made it particularly difficult to form an accurate idea of the real state of affairs. For example, he had the impression from reading paragraph 213 of the report, concerning trade union law, that trade unions were treated as revolutionary organizations in Madagascar and he would like to know whether that was indeed the case. He also wondered whether non-governmental organizations were likewise regarded as revolutionary organizations.

10. Mr. WENNERGREN noted the right to strike was recognized under the new article 23 of the Constitution, but was to be exercised in conformity with the law. He would like to know what conditions and restrictions were imposed by law on the exercise of that right.

11. Mr. ANDO associated himself with the questions raised by Mr. Myullerson and asked whether the term "revolutionary" had a political connotation. Secondly, it was stated in paragraph 213 of the report that the ways in which public officials could exercise their right to set up trade unions seemed inconsistent with the ILO Convention concerning Freedom of Association and Protection of the Right to Organize. He therefore inquired whether the legislation had been amended in consequence, and whether any new trade unions had been established or any former trade unions had been dissolved, in order to remedy that irregularity vis-à-vis the ILO Convention. Lastly, he understood from paragraph 212 of the report that the law did not provide for the right of association of seamen: was that for reasons connected with tradition or for other reasons?

12. Mr. PRADO VALLEJO likewise noted that there were no trade union rights for seamen and inquired how that category of workers exercised their rights. It was also indicated in paragraph 213 of the report that the State had authority over the Malagasy revolutionary organizations and could at any time

dissolve them. On what grounds might the State, which could not act arbitrarily, decide to dissolve such organizations and what machinery was there to prevent abuse in that area? Lastly, he wondered what was meant by the second sentence in paragraph 214 of the Spanish text of the report and would appreciate some clarification in that regard.

13. Mr. SERRANO CALDERA also inquired about the meaning of paragraph 214 in the Spanish version of the report. In addition, he would like to know whether, under the Charter of Socialist Enterprises, access to the workers' committees could be restricted for a reason other than non-membership of one of the trade unions associated with the National Front.

14. Mr. RADAODY RAKOTONDRAVAO (Madagascar) pointed out that the 1975 Constitution had been promulgated at a time when the idea of revolutionary organizations had been extremely popular in the country, but the ambitious plans for self-management by the people had never succeeded and in fact it was the major political parties which had become revolutionary organizations. One of the principles embodied in the 1975 Constitution had been that of public ownership of the means of production, i.e. nationalization of the main sectors of the economy, and their management within the framework of "socialist enterprises". The trade unions had been authorized to participate in the activities of the socialist enterprises, but the situation had changed radically thereafter because the so-called socialist enterprises had completely disappeared and, in 1982 and later in 1989, laws had been promulgated to abolish the revolutionary organizations. There were now simple political parties in Madagascar, which were free to form alliances if they wished. Furthermore, the trade unions were free to exercise their rights in accordance with the law, whether or not they were affiliated to a political party. Thus the information given in paragraphs 213 and 215 of the report was no longer up to date. There was in fact complete trade union freedom in Madagascar, as demonstrated in particular by the free exercise of the right to strike, which was widely used and incurred no penalty. On a single occasion, in 1977, some ministries had brought an action against public employees, claiming that they had not been ensuring the minimum service required, particularly in hospitals, by going on strike. However, the ministries' complaint had been dismissed by the administrative division of the Supreme Court and the strikers' rights had been upheld. That decision by the Supreme Court had set a legal precedent and no one any longer considered imposing sanctions for strikes.

15. Replying to Mr. Wennergren, he said that all the earlier provisions relating to trade union rights had been repealed and under the new draft articles 23 of the Constitution the right to strike was explicitly recognized and was to be exercised "in conformity with the law". That phrase was probably meant by the lawmakers to refer to the limitations required by the need to maintain public order and guarantee the security of the State. In practice, however, there had been no cases of restriction of trade union rights. It should be recalled that the trade unions were very powerful in Madagascar. In 1972, for example, the Government had fallen within 15 days after attempting to crush a widespread strike movement by force. Since 1975, dialogue and negotiation had been preferred to confrontation and that had been facilitated by trade union support of the Government party.

16. In answer to Mr. Myullerson's questions concerning paragraph 213 of the report, the current situation showed clearly that trade union rights were being effectively exercised. Many trade unions had called strikes and were taking advantage of the current intensive political activities, which gave them an opportunity to express their grievances concerning wages and conditions of work. Strikes would not, of course, resolve the problems associated with economic stagnation, as the trade unions well knew, but they at least helped to make people aware of those difficulties.

17. Mr. Ando had been surpised that seamen did not have trade union rights (para. 212 of the report). As an island country, Madagascar had many seamen who worked mostly on foreign vessels and sometimes found themselves in difficulties far from their country, because they had been dismissed by their employer and stranded on the dockside in a distant country, or were not paid for months after completing their contract. The State also had to arrange at times to collect and repatriate Malagasy sailors in distress after shipwreck. The fate of such people was often very harsh. There were dockworkers' unions which looked after the interests of their seafaring brethren. But the problem of implementing the minimum rights of seamen was in fact an international issue and was being examined in the ILO and other forums.

18. Questions had been asked about the State's authority over the Malagasy revolutionary organizations and the power it could exercise to dissolve them under Ordinance No. 76-008 (para. 213 of the report). That ordinance was null and void and the organizations concerned no longer existed, but none of them had been dissolved by the State.

19. The CHAIRMAN invited the Committee to turn to section XII of the list of issues.

XII. Protection of the family and children (arts. 23 and 24)

What further progress has been achieved, if any, since the submission of the report in enacting legislation to ensure an equal share of responsibilities, duties and rights as between the spouses? In this regard have any of the bills mentioned in paragraph 226 of the report been enacted?

20. Mr. RADAODY RAKOTONDRAVAO (Madagascar) said that the thorough-going revision of the Constitution now under way would not affect the law governing the protection of the family and children, which was based mainly on custom and practice. Some articles relating to the matrimonial regime (Act No. 67-030 of 1967) which had established a method of distribution entitling the wife to only one third of the joint estate had been amended by an act of 20 July 1990 which provided for an equal division, subject to the contractual arrangements entered into by the spouses. Consequently, the statement in paragraph 226 of the report was no longer valid. An equal share of responsibilities as between spouses (para. 227 of the report) was ensured in the legislation. The idea of the husband as head of household was disappearing in Malagasy law. The important task of updating codes and laws would also involve bringing together various provisions to constitute a family code that could be expected to meet the requirements of the Covenant.

21. Mr. ANDO said that he first wished to ask a question about the nationality of children. The Malagasy Nationality Code was essentially based on filiation (para. 234 of the report) but the Covenant stated that every child had the right to acquire a nationality (art. 24). In the case of a child whose filiation was difficult to establish, criteria based on the name, physical characteristics and social environment in which the child lived were applied in Madagascar. Could not another criterion, such as place of birth, for example, be added? Secondly, he would like to know whether Madagascar had signed and ratified the Convention on the Rights of the Child or contemplated doing so.

22. Mr. SADI asked whether the ordinance of 22 July 1960 setting out the Malagasy Nationality Code was still in force because he, too, was concerned by the way in which the nationality of a child of unknown parentage was established in Madagacar; the criteria used might prove arbitrary. He wondered whether the Nationality Code had been amended.

23. Mr. RADAODY RAKOTONDRAVAO (Madagascar) replied that the 1960 ordinance containing the Nationality Code was still in force and there were no plans to change it. It had given rise to much discussion, but Malagasy lawmakers and politicians remained committed to the idea of nationality based on filiation. The question of the acquisition of nationality by birth on Malagasy soil had been raised but there had never been a consensus on the matter. The criteria used to determine the nationality of a child of unknown parentage were indeed hardly scientific and perhaps even arbitrary, but they were based on an old Malagasy tradition whereby members of the grass-roots communities, the "fokonolona", were chosen by co-option. That was in fact the criterion most often used to determine nationality: the judge requested the views of the grass-roots community where the child or person concerned was living before deciding whether to grant Malagasy nationality. However, Malagasy nationality could also be acquired by naturalization.

24. In regard to children born on Malagasy soil, the authorities were not considering the possibility of granting nationality on the basis of that criterion because Madagascar was a country of transit for many Asian immigrants who were headed for East African countries and who would stay only a few years. Furthermore, it should be pointed out that many inhabitants of the Comoros, Réunion and Mauritius had experienced no difficulty in acquiring Malagasy nationality because they had physical, linguistic and cultural characteristics very similar to those of the Malagasy people.

25. Madagascar had signed the Convention relating to the Status of Stateless Persons and was endeavouring to give a nationality to everyone residing on its territory. In practice, the judge called on to regularize that kind of situation did so by issuing an identity certificate, after making inquiries among the people in the village or district where the person concerned lived. There had been no particular difficulties to date in that regard. However, difficulties arose in the opposite case, namely when a child born of stateless of immigrant parents who had acquired Malagasy nationality by the identity certification procedure subsequently declared, on reaching the age of call-up for military service, that Malagasy nationality had been forced on him, and claimed another nationality or asked to be treated as a stateless person. That problem dated from the colonial period, when very different regulations

had coexisted in Madagascar, and it arose mainly with children of Asian immigrant parents who had formerly been French subjects but had lost their nationality, or with children born of parents of uncertain nationality. But the authorities were endeavouring, and with success, to solve the problem. There were no really large groups of stateless persons in Madagascar.

26. Madagascar had signed the Convention on the Rights of the Child but had not yet ratified it. As a country with a very young population, 46.2 per cent of Malagasies being under 14 years of age, Madagascar knew that youth was the future of the country and attached great importance to the rights of the child.

27. The CHAIRMAN invited the Committee to consider section XIII of the list of issues.

XIII. Rights of persons belonging to minorities (art. 27)

Please provide information on minorities that have not yet fully succeeded in taking their place in the Malagasy nation (see para. 242 of the report).

28. Mr. RADAODY RAKOTONDRAVAO (Madagascar) said that for centuries there had been foreign minorities in Madagascar as it was a country that had been settled by immigrants. The ancestors of the Malagasy has come from the Indonesian and Malay archipelagos and also from Africa. The minorities had integrated and had formed the Malagasy nation, with a common language, a common basic civilization and a majority religion over the island as a whole - Christianity. Madagascar continued to receive immigrants, who were often in transit to the African continent from Asia, but also immigrants coming from Africa.

29. Madagascar prided itself in having on its soil representatives of practically the whole of Africa, the Arab world, Asia and Europe. All those minorities had played an important part in shaping Malagasy civilization and had molded more or less harmoniously into the nation. There were regions where certain influences predominated: European influence on the east coast; Arab-Muslim on the north-west coast and in the south-east; Asian, and particularly Chinese, in the east; African (South Africa or southern Africa, Mozambique, Tanzania) on the west coast; and the influence of communities from Sumatra, Sulawesi and Java in the west and centre.

30. After the feudal period, marked by struggles between clans and kingdoms, the nineteenth century had seen the formation of a unitary, centralized kingdom and it was now possible to talk of a single Malagasy nation speaking the same language and having the same basic culture. There were still small minorities of Chinese who had preserved their Buddhist religion and their language and who had schools, as well as minorities from the Comoros, Réunion, Mauritius, the Seychelles and the Maldives. The minority of French nationality was the largest and consisted mainly of Malagasies, Indo-Pakistanis and Comorians who had opted for French nationality at the time of independence and had remained in Madagascar. They currently numbered between 20,000 and 25,000.

31. The Indo-Pakistanis were important for their role in the Malagasy economy as one of the richest communities. They had retained their customs and religions and mixed very little with the others; thus the occasionally hostile

reaction of the population against that community was economic rather than racial in origin. The Indo-Pakistanis ran all the retail businesses and accounted for a large part of the import and export trade and banking; they were an important pillar of economic life.

32. The Chinese community was somewhat different. It also played a very important role, some of its members being extremely rich, but it had a tradition of mixing with the rest of the population and there were some Chinese villages on the east coast where the Chinese names had become Malagasized; those people of Chinese origin spoke Malagasy and had family ties with the inhabitants of neighbouring villages. It was a community that had never drawn attention to itself.

33. The Arab Muslim minority, coming from Somalia, Yemen, Oman and Zanzibar, was very small and it was often hard to distinguish its members from Malagasy Muslims as their presence went back several centuries. Arab Muslims had Malagasy nationality and participated actively in political, economic and social life.

34. The number of foreigners living in Madagascar had not given rise to any real problems, with the exception of the regrettable incidents that had occurred against Indo-Pakistanis and the Comorian minority in 1976 in the region of Mahajanga. The State had always taken strong action against excesses of that kind. The attacks on the Comorians in Mahajanga had been severely punished, as had the riots which had broken out against the Indo-Pakistanis. The State had come to the assistance of the victims, helping to defend their rights. With regard to the Comorians, it should be recalled that the largest settlements of Comorians were in Madagascar, that the Comoros had been part of Madagascar in the colonial period and that the islands of Anjouan and Mayotte had been governed by families of the Malagasy aristocracy at the time of the Kingdom.

35. In conclusion, there was no minorities problem in Madagascar. There had been Comorian ministers in the Government as well as ministers originating from Réunion and Mauritius. The tradition of tolerance which prevailed in Madagascar was a recognized fact.

36. Mr. HERNDL said that he had listened to the explanations provided by the Malagasy delegation with especially keen interest because he had noted a contradiction in the report regarding the concept of minorities. According to paragraph 240, there was no ethnic minority "living on the fringes of the community", yet the following paragraph stated: "However, there are small foreign minorities ...". The authors of the report seemed to regard only foreign communities as minorities. It might be wondered how, for example, the Government guaranteed the preservation of the linguistic and cultural identity of members of minorities who had Malagasy nationality.

37. Mr. NDIAYE asked whether the Malagasy authorities knew about the "threshold of tolerance" concept.

38. Mr. DIMITRIJEVIC said that he would like some clarification as to the official language or languages in Madagascar and wished to know whether any assistance was provided for people in Madagascar who did not speak the

official language, particularly when they had dealings with the administrative or judicial authorities.

39. Mr. RADAODY RAKOTONDRAVAO (Madagascar), replying first to Mr. Ndiaye, said that Madagascar had a very large land area and was a country of immigration that had been receiving many communities for centuries. The idea of a threshold of tolerance was therefore not applicable.

40. Regarding the concept of minorities as it was understood in the report, the latter did make an obvious distinction between integrated minorities and foreign minorities that were poorly integrated or unintegrated. In Madagascar, any member of a minority who had Malagasy nationality was perfectly integrated and did not live on the fringes of society. On the other hand, the members of minorities who did not have Malagasy nationality did not take part in the country's political life, but they had their own schools and were perfectly free to practise their religion. Thus the Indo-Pakistani funeral practices were fully authorized. The Malagasy authorities had never considered the question of measures to preserve the identity of minorities. A foreigner who took Malagasy nationality was in fact being integrated, or had already been integrated. In order to prevent any marginalization, certain conditions had to be fulfilled to obtain naturalization. If those conditions were not satisfied, the foreigner was nevertheless free to stay in Madagascar, retaining his current nationality, and had complete freedom to carry on economic and other activities, but did not participate in elections.

41. The Government of Madagascar did not discriminate against the members of any minority, but it was difficult for it to take active measures to protect the identity of all minorities. With the exception of the French minority, no minority was large enough for the Government to subsidize, for example, the study of its language, particularly in the case of Chinese or Arabic. Nevertheless, it authorized the opening of schools to teach those languages and aspects of culture specific to the minorities. With regard to the Muslim minority, which constituted 10 per cent of the population, the State had subsidized the building of some mosques and invited Muslims to participate in ecumenical services, an important and very vital tradition in the country. Associations of Muslim women and workers were also active. There were Muslim banks, and also Chinese banks. With regard to the African minorities, it should be noted that although Swahili was not taught in Malagasy schools, there were whole villages where it was spoken.

42. The official language was Malagasy but French had also been an official language under the former Constitution. It was customary to draft all official acts in both languages and anyone dealing with an administrative or judicial body could use either language.

43. The CHAIRMAN announced that all the questions on the list of issues had been considered and invited the members of the Committee to make their concluding observations.

44. Mr. NDIAYE said that the second periodic report of Madagascar (CCPR/C/28/Add.13) was satisfactory in that it was structured in accordance with the Committee's guidelines and contained a substantial amount of information. It should be emphasized, furthermore, that the procedure

established by article 40 of the Covenant was of value only if the representatives of States parties agreed to answer the Committee's questions in good faith, which was what the Malagasy delegation had done.

45. At the outset of the consideration of the report, he had been concerned about the impact of structural adjustment policies on implementation of the Covenant in Madagascar, as he had already become convinced that their implications were real and harmful. The shortcomings or deficiencies in Madagascar were very often caused by lack of means and the Committee had observed, with regard to articles 6, 7, 9, 10, 11 and 14 of the Covenant, that practices incompatible with the Covenant were not deliberate but stemmed from the fact that it was impossible to act otherwise. That situation, which obtained in many third world countries, called into question the classical distinction in law between acts of commission and omission, both categories presupposing a minimum of means. The State party could certainly be encouraged to make further efforts, but progress would inevitably be difficult unless there was a marked improvement in the economy. A feature of the current period was that the more young States matured, the less they were able to meet the needs of their people and to implement human rights, even when they had the political will to do so. There were now fewer and fewer dictatorships, but human rights were still not always respected. The problems of the third world countries were so great that they even had difficulty in making up delegations to present their reports to the treaty bodies, and in general the ability of third world countries to take a part in international life was continuing to decrease. Meanwhile, the World Bank and the International Monetary Fund were recommending, if not ordering, that the size of diplomatic missions should be reduced! Perhaps the Committee should give some thought also to ways of lessening the financial burden on States parties, particularly in regard to the travel costs of their delegations.

46. Mr. WENNERGREN said that he had listened with great attention to the replies and observations of the Malagasy delegation, which had helped to inform him about the situation in Madagascar at a time when the country was undergoing profound change. It was encouraging to see that the direction taken by Madagascar was likely to promote greater respect for human rights. There were however some causes for concern, especially prison conditions, which certainly had to be improved. Also, security of the person, a right established by article 9 of the Covenant, did not appear to be assured. The Government of Madagascar should do everything to remedy that situation. A strengthening of police controls was no doubt required, but it was also necessary to inculcate in the population the principle set forth in article 1 of the Universal Declaration of Human Rights, which stated that all human beings should act towards one another in a spirit of brotherhood.

47. He hoped that the reforms under way in Madagascar would result in a legal order that was truly conducive to the protection of human rights.

48. Mr. PRADO VALLEJO welcomed the cordial and constructive dialogue which had been established. He felt that it would be useful to revert to three issues arising from the consideration of the report. First, the large number of courts of special jurisdiction in Madagascar could undermine the unity of the system of justice and, although the reasons for their establishment were understandable, there was no justification now for

retaining them. Secondly, the powers of the executive branch were too sweeping and allowed it to legislate, whereas that function should be the exclusive domain of the People's National Assembly. Thirdly, trade union rights were not fully guaranteed and that was a gap which must be filled. He trusted that the Government of Madagascar would take account of all those comments.

49. Miss CHANET said that the report of Madagascar (CCPR/C/28/Add.13) had given satisfaction in large part because it had been prepared in accordance with the Committee's guidelines. In its dialogue with the Committee the delegation of the State party had endeavoured to reply frankly, without trying to conceal problems. She trusted that the questions, replies and comments arising from the consideration of the report would be transmitted to both the governmental and the legislative authorities of Madagascar.

50. The redrafting of the Constitution would bring about legislative reforms, and that would be an opportunity to give the Covenant a prominent place in Malagasy law and to institute remedies enabling citizens who considered that their rights under the Covenant had been violated to invoke that instrument in the courts. The reforms should also provide an opportunity to reorganize the judiciary regulations so as to guarantee fully the independence of the judiciary in relation to the other powers and to free it from supervision by the Prosecutor of the Supreme Court as well as by the Supreme Court itself. In that context article 11 of Ordinance No. 82-019, which gave that court disproportionate powers of supervision, should be repealed. Similarly, the special courts should be abolished and the cases brought before them referred to the ordinary courts, if necessary establishing more severe penalties for offences regarded as extremely harmful to society.

51. Concerning the right to life, it was essential that the State should not yield to the tendencies to indulge in personal vengeance that were manifested far too often, and above all it should not legalize such practices. Thus, article 329 of the Penal Code should be repealed, since its application had not helped to improve matters.

52. With regard to the treatment of prisoners, the Malagasy delegation had recognized the difficulties experienced by the public authorities in ensuring the enjoyment of the rights under article 10 of the Covenant. She was pleased to note that the Government had not accepted that state of affairs as inevitable and was anxious to improve the situation.

53. She awaited with interest the outcome of the reforms under way in Madagascar.

54. Mr. SERRANO CALDERA thanked the Malagasy delegation for the quality of the report (CCPR/C/28/Add.13) and for its interesting and highly useful explanations and replies. There were still some issues of concern, however, but the delegation would doubtless communicate them to its Government so that the Committee's observations could be taken into account in the extremely important debate currently taking place in Madagascar. The country was at a turning point in its history: not only was the Constitution under revision but the very political parameters of government were being defined. Legal instruments, as an expression of the conditions prevailing in the country,

must reflect a national consensus. Accordingly, it was very important to find points of convergence between the various expressions of the national consciousness.

55. He hoped that a good many of the problems could be solved but wished to point out that respect for human rights did not depend solely on the legal and constitutional framework; it also depended on the personal convictions of public officials and decision makers.

56. With regard to the protection of fundamental human rights, the country's authorities should in particular give priority to the incorporation into national legislation and the practical implementation of articles 6, 7, 9, 10, 14 and 22 of the Covenant. It was vital to guarantee security of the person, the independence of the judiciary and the unity of justice. The current situation in Madagascar afforded an exceptional opportunity to set up a legal system that would provide a really effective framework for the protection of basic human rights. It might also be an excellent opportunity to strengthen the trends mentioned in the second periodic report (CCPR/C/28/Add.13), such as guarantees of trade union pluralism, etc.

57. It was essential for the societies of the so-called third world to reaffirm their national identities and cultures. There was much talk about the "end of ideologies" but unfortunately the disappearance of authoritarianism was not necessarily accompanied by full respect for human rights. In the world today those rights were at risk. A vast process of dehumanization and loss of individuality was taking place. Some universal designs of plans sought to impose a single definition of what society, culture, politics, education and so on should be. Such visions imperilled the national identity of peoples. Nevertheless, there was a common denominator for all the peoples of the world, a universal project to which all mankind could contribute. That was the protection of human rights and in particular respect for civil and political rights. They were the tacit or explicit expression of standards applicable to all human beings.

58. In conclusion, he wished the authorities of Madagascar success at the very important stage of redefining the poliical features of government. Constitutions were instruments that not only translated an objective reality but aimed at disseminating values which it was desired to preserve and develop and he wished the legislature every success in drafting the new Malagasy Constitution.

59. Mr. ANDO thanked the Malagasy delegation for its frank and detailed presentation of the second periodic report (CCPR/C/28/Add.13), which, although late, was nevertheless exemplary. At the end of the discussion some concerns still remained. He thought, for example, that the separation of powers between the different State bodies ought to be more clearly defined and that the independence of the judiciary should be genuinely assured; the competent authorities should also expedite processing of the large number of legal cases still pending. Improvements would have to be made in a number of fields, particularly prison conditions, family law (equality of the spouses), safeguards of the rights and interests of workers, etc.

60. Like many other countries in the region, Madagascar had inherited a number of problems from the colonial administration. Nevertheless, he was convinced that the Government would spare no effort to surmount those difficulties with the means at its disposal.

61. In conclusion, Madagascar could be cited as a "model case" in the discussions at the forthcoming World Conference on Human Rights, which would deal essentially with the question of development and human rights. That would be an occasion for Madagascar to make known to the world its achievements in that field.

62. He requested the Malagasy delegation to transmit to its Government the concerns expressed by the members of the Committee and wished the Malagasy authorities every success in their task.

63. Mrs. HIGGINS remarked on the exceptional quality of the report (CCPR/C/28/Add.13). Its presentation had led to a useful dialogue during which the Malagasy delegation had provided a great deal of interesting information, particularly on the general legal framework. She had especially noted the explanations concerning the revision of the Constitution and hoped that the Malagasy lawmarkers would take account in their deliberations of the points raised by the members of the Committee regarding safeguards not contained in the existing Constitution.

64. Several positive aspects were to be emphasized: the progress achieved with regard to the press, the clemency shown in prison sentencing policy and the approach taken on the question of the right to self-determination of minorities.

65. However, she had noted a number of problems, which could be divided into two categories. The first consisted of difficulties that were fully acknowledged by the Malagasy authorities but which seemed impossible to resolve owing to the shortage of resources (slowness of justice, inadequate nutrition in prisons, excessive length of detention in many cases, lack of control by the local authorities over the problem of cattle theft, etc.). It was to be hoped that, as the human rights situation was improving, greater assistance would be offered to Madagascar to enable it to deal with all the problems which the authorities had so frankly recognized. The Government should therefore give priority to those matters and seek every possible assistance from the international system in order to permit the allocation of resources to specific projects in the areas mentioned, without waiting for a general economic improvement in the country. The second category consisted of problems that were not directly connected with the lack of resources and which the authorities did not necessarily consider as problems. She referred, for example, to the question of political prisoners. The Malagasy delegation had indicated that there were currently no political prisoners in Madagascar but that there might again be some in future. However, the Covenant provided that no one could be detained except in accordance with the law and in no case on political grounds. She drew attention to that matter because it also concerned the application of the provisions of the Optional Protocol to the Covenant.

66. The information given by the Malagasy delegation and its dialogue with the Committee were nevertheless encouraging. She wished to thank the Government of Madagascar for its observations regarding the Committee's General Comments on article 14 of the Covenant. She also hoped that the dialogue has been as useful for the Malagasy delegation as it had for the Committee and that it would be resumed in the near future.

67. Mr. DIMITRIJEVIC thanked the Malagasy delegation for the openness and good will it had shown throughout the fruitful dialogue that had taken place. He noted with satisfaction that the delegation and the Committee had exchanged views with great frankness in a spirit completely devoid of antagonism. Furthermore, the second periodic report (CCPR/C/28/Add.13) and its presentation by the Malagasy delegation had highlighted an aspect of human rights that was not often raised in the Committee.

68. Concerning the role of external assistance in the field of human rights, both the members of the Committee and the Malagasy authorities seemed to believe that the current problems were due mainly to a lack of resources. International assistance should therefore be sought, in particular from United Nations bodies.

69. For a long time and for a variety of reasons, development had been considered from the purely economic standpoint, yet it also implied a commitment to the quality of life and must among other things help to ensure order while guaranteeing individual rights. In the latter respect, members of the Committee had stated their concern, for example, at the fact that in large parts of Madagascar the police were overstretched and unable to maintain order, a situation that had caused the public to turn increasingly to means of self-defence. That situation was due to the State's inability to provide adequate funds for the services responsible for order and security. It was obviously a case in which the question of the resources available to the authorities was particularly important.

70. Nevertheless, some problems could be remedied or at least mitigated without recourse to external assistance. There was for example the question of defining the country's major options, a particularly important matter at a time when the Constitution was being redrafted. The most urgent measure in that regard was undoubtedly to create a sound and coherent legal system based on a detailed constitution. Furthermore, some legal requirements were not in fact being complied with in Madagascar. For example, pre-trial detention, which could not in theory exceed six months, might actually last for up to two years. That was another abuse which could be remedied without the need for substantial external assistance. The same was true of prison overcrowding and living conditions, the treatment and nutrition of inmates, etc.

71. In addition, he thought that the Government should provide more detailed information about action taken in response to the Committee's observations on the communications submitted to it under the Optional Protocol to the Covenant.

72. Lastly, he associated himself with the other members of the Committee who had referred to the ambiguous situation regarding the question of minorities in Madagascar. He would like to know who constituted the majority in the country. Did the Government consider that the population of Madagascar was

made up of various minorities, united only by language? He wondered whether the Government's position on that issue might not be similar to the one taken by the French authorities, which on ratifying the Covenant had made a declaration stating that since all citizens of France were regarded as French under the Constitution (art. 2), article 27 of the Covenant (rights of minorities) did not apply in that country. He had gathered, however, that the Malagasy authorities regarded only aliens permanently living in the national territory as a minority, no other groups - ethnic, religious, etc. - being able to claim that they constituted minorities. He would like some clarification on that matter, which he hoped would be given serious consideration by the Govenment of Madagascar.

73. Mr. AGUILAR URBINA thanked the Malagasy delegation for its frank comments and welcomed the discussion which had taken place with the Committee. He was nevertheless concerned by three points already mentioned in the course of that discussion. First, with regard to the general legal system, it appeared that there was no true separation of powers in Madagascar and that the executive had very extensive powers, particularly in relation to those of the legislature. Secondly, the existence of special courts was a cause for concern in view of the need to ensure the unity of justice. Thirdly, he was concerned about safeguards of the right to life in Madagascar; he referred specifically to the question of cattle theft and the lack of control by the authorities in some parts of the country.

74. Mr. SADI said that he shared the concerns expressed by other members of the Committee particularly with regard to the living conditions in prisons and the treatment of inmates.

75. He wished for his part to stress one very important issue - that of political pluralism. The enjoyment of human rights could be ensured only through democracy, and that could exist only in the framework of political pluralism. The national authorities were certainly moving in that direction, but the trend must now be reinforced. It should be remembered that the Centre for Human Rights had advisory services. In view of the reforms under way in the country, he suggested that the Malagasy delegation should recommend that its Government request those services to help determine what measures should be taken in order for it to comply fully with its obligations under the Covenant.

76. Mr. MYULLERSON expressed satisfaction at the quality of the second periodic report (CCPR/C/28/Add.13) and the statements made by the Malagasy delegation, which had helped to clarify a number of points. He hoped that the delegation would inform its Government about the Committee's concerns. He also hoped that the competent authorities would make sure to eliminate the ideological biases that marked current Malagasy legislation. Lastly, he would like the next periodic report to be considered at an early date.

77. The CHAIRMAN said that he, too, wished to underline the quality of the second periodic report (CCPR/C/28/Add.13), which had been drafted in accordance with the guidelines and which, although it had been submitted very late, reflected the desire of the Malagasy authorities to cooperate with the Committee.

78. He shared the views of the members of the Committee with regard to the close relationship between development and human rights. There was similarly a link between development assistance and the protection of civil and political rights. He requested the Malagasy delegation to transmit all the Committee's comments and suggestions to its Government so that it might pass them on to the competent bodies, in particular the legislature, which was preparing the draft of the new Constitution. It was highly desirable that the lawmakers should take account of the Committee's observations in the process of redrafting the Constitution, and the Parliament might for example consider incorporating the Covenant in national legislation, thereby removing any ambiguity about the primacy of the provisions of the Covenant over national laws.

79. With regard to the submission of Madagascar's next report, he recalled that the third periodic report had been due on 3 August 1988. The Committee would take a decision at its current session on setting a new date for submission of the third report. In view of the importance of the constitutional and legislative developments in Madagascar, the report should be submitted as soon as possible so that the Committee could follow as necessary the changes taking place in the country.

80. In conclusion, he thanked the Malagasy delegation for the frankness and courtesy with which it had replied to the questions asked by the members of the Committee, thus helping to make the dialogue a constructive one.

81. Mr. RADAODY RAKOTONDRAVAO (Madagascar) thanked the members of the Committee for their very valuable opinions. The authorities of his country had always recognized the usefulness of the Covenant, not only for Madagascar but for mankind in general. He assured the members of the Committee that all their observations would be communicated to his Government and that the authorities would do everything in their power to remedy the shortcomings which had been noted. They had already requested the Centre for Human Rights several times to assist them in that task. More than economic and financial assistance, what mattered was the training of personnel. In that respect, the Centre was well-equipped to help developing countries, and the Malagasy authorities counted on the members of the Committee to make the other bodies of the United Nations system even more aware of that question.

82. The CHAIRMAN said that the consideration of the second periodic report of Madagascar (CCPR/C/28/Add.13) had been concluded.

83. The delegation of Madagascar withdrew.

The meeting rose at 1.10 p.m.